

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE

v.

BRANDON S. GIBSON,

Defendant.

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I.D. No. 1703015543

Upon Defendant Brandon S. Gibson's Amended Motion for Postconviction Relief:
GRANTED.

Submitted: July 26, 2019

Decided: July 30, 2019

Beth Deborah Savitz, Esquire, Deputy Attorney General, 820 North French Street,
Wilmington, DE 19801, Attorney for State of Delaware.

William T. Deely, Esquire, Schwartz & Schwartz, 1140 South State Street, Dover,
DE 19901, Attorney for Defendant Brandon Gibson.

WHARTON, J.

This 30th day of July, 2019, upon consideration of Defendant Brandon S. Gibson's Amended Motion for Postconviction Relief,¹ the State's Response,² and the record in this matter, it appears to the Court that:

1. Defendant Brandon S. Gibson ("Gibson") was indicted by the Grand Jury on various drug and weapon charges. On December 12, 2017, Gibson pled guilty to a single charge of Possession of a Firearm by a Person Prohibited (PFBPP).³ In exchange, the State dropped the remaining charges and agreed, *inter alia*, to recommend 15 years at Level 5, suspended after 10 years, for lesser levels of supervision.⁴ The Court immediately imposed the recommended sentence as requested by counsel on the representation that the 10 year portion of the level 5 sentence that the Court did not suspend was a minimum mandatory sentence as a result of Gibson having two previous violent felony convictions.⁵

2. Gibson did not appeal his conviction and sentence to the Delaware Supreme Court. Gibson filed a timely first Motion for Postconviction Relief pursuant to Superior Court Criminal Rule 61 on August 6, 2018.⁶ Gibson's court

¹ D.I. 74.

² D.I. 76.

³ D.I. 47.

⁴ *Id.*

⁵ D.I. 48. *See also*, Truth in Sentencing Guilty Plea Form executed by Gibson and defense counsel.

⁶ D.I. 54.

appointed counsel filed this Amended Motion for Postconviction Relief (“Amended Motion”) on June 24, 2019.⁷

3. The Amended Motion raises three claims. The first is that Gibson’s enhanced minimum mandatory sentence was illegal because it was based on an incorrect understanding of the nature of one of Gibson’s prior convictions. Specifically, Gibson claims that one of his prior convictions was for Possession of Ammunition by a Person Prohibited (PABPP), a non-violent felony, and not PFPP, a violent felony. The latter charge triggers a 10-year minimum mandatory sentence while the former does not. The other two claims allege ineffective assistance of counsel unrelated to the first issue, for which counsel finds no merit. Accordingly, the Court declines to address the ineffective assistance of counsel claims.

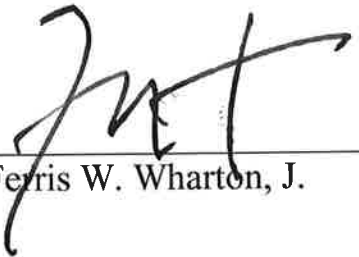
4. After reviewing the transcript of the earlier conviction, the State acknowledges in its response that one of Gibson’s earlier convictions was for PAPP, and not PFPP. Accordingly, the Court finds that Gibson’s sentence in fact was illegal.

5. The parties agree that a presentence investigation would be appropriate prior to resentencing. Unfortunately, Gibson is currently held in Pennsylvania on this charge. The State represents that it is attempting to secure Gibson’s transfer back to Delaware for purposes of a presentence investigation and sentencing.

⁷ D.I. 74.

THEREFORE, IT IS ORDERED that Defendant Brandon S. Gibson's Amended Motion for Postconviction Relief is **GRANTED**.

IT IS FURTHER ORDERED that a presentence investigation be conducted. The Court will entertain further applications, should any become necessary, regarding Gibson's return to Delaware.



Ferris W. Wharton, J.

oc: Prothonotary
cc: Office of Investigative Services